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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,752	02/08/2005	Klemens Kieninger	502901-330PUS	2727
27799 7590 04/08/2009 COHEN, PONTANI, LIEBERMAN & PAVANE LLP 551 FIFTH AVENUE SUITE 1210 NEW YORK, NY 10176				
EXAMINER				
FREAY, CHARLES GRANT				
ART UNIT		PAPER NUMBER		
3746				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/523,752

Applicant(s)

KIENINGER ET AL.

Examiner

Charles G. Freay

Art Unit

3746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This office action is in response to the amendment of February 13, 2009. In making the below rejections the examiner has considered and addressed each of the applicant's arguments.

Claim Objections

Claim 4 is objected to because of the following informalities: the claim is currently dependant upon claim 3 but clearly should be dependant upon claim 1 or 2. Claim 3 is directed to the embodiments where the mixing tube is arranged at an angle deviating from perpendicular and claim 4 is directed to the angle being substantially perpendicular. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 3, 6, 7, 10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Sawert (USPN 5,139,000).

Sawert discloses a suction jet pump having a propulsion jet nozzle 66 with a round orifice 70, a mixing tube 72, and suction line 58 which connects to the suction jet

pump at an intake orifice, and having the mixing tube plug connected to and within a pot 54, 64 which is coupled to and fills a baffle 12. The mixing tube is parallel to the bottom of the pot.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 2, 4, 6, 7 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese reference (JP 05-99090 (hereafter JP-'090)).

JP-'090 discloses a suction jet pump having a propulsion fluid pipe 13, a mixing tube 8, and suction line 12 which connects to the suction jet pump at an intake orifice, and having the mixing tube within a pot 9 which is coupled to and fills a baffle 15. The mixing tube is perpendicular to the bottom of the pot and the pot and the suction jet pump are fluidly connected. JP-'090 does not disclose the propulsion jet nozzle having a round orifice or the pump being connected to the pot by a latch or the jet pump being integrally formed with the pot. Becker et al discloses a suction jet pump used in a similar fuel tank environment as JP-'090 and having around propulsion jet 10 outlet nozzle 11 and a latch 20 for connecting and securing the pump in place. At the time of the invention it would have been obvious to one of ordinary skill in the art to utilize a propulsion jet structure and connection assembly s taught by Becker et al for the generically disclose suction jet pump in JP-'090 as a well known and simple jet pump structure which is easily connected and disconnected to the pot arrangement.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sawert.

As set forth above Sawert discloses a suction jet pump substantially as claimed but does not disclose that the pot and the jet pump are integrally formed. At the time of

the invention it would have been obvious to one of ordinary skill in the art to have integrally formed the elements, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. See *Howard v. Detroit Works*, 150 U.S. 164 (1991).

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sawert as applied to claim 8 above, and further in view of Ramamurthy et al (USPAP 2003/0213477).

As set forth above Sawert discloses the inventions substantially as claimed but does not disclose welding or adhesively bonding the pot to the suction jet pump. However, Ramamurthy teaches of a fuel pump module including a reservoir having a jet pump whereby the jet pump is welded to the reservoir (see abstract). At the time of the invention it would have been obvious to one of ordinary skill in the art to connect or bond the pot to the jet pump as disclosed by Sawert through means of welding as taught by Ramamurthy et al to create a secure connection there between.

Claims 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP-'090 in view of Becker as applied to claim 3 above, and further in view of Herzog et al (USPN 6,708,673).

As set forth above JP-'090 in view of Becker discloses the invention substantially as claimed but does not disclose that the mixing tube is at a specific angle with respect to the perpendicular axis and the bottom of the pot. Herzog et al discloses a pot having

a jet pump and mixing nozzle 14 which curves from the perpendicular direction through an multitude of angles, including those claimed, before entering the pot. At the time of the invention it would have been obvious to one of ordinary skill in the art to arrange the mixing nozzle at an angle in order to fit the pipe within the space and confines of the tank within which the pump is to be used.

Response to Arguments

Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sertier, Takahashi and Ushigome disclose jet pump arrangements for fuel tanks.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G. Freay whose telephone number is 571-272-4827. The examiner can normally be reached on Monday through Friday 8:30 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on 571-272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles G Freay/
Primary Examiner
Art Unit 3746

CGF
April 6, 2009